

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

HEADWATER RESEARCH LLC,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD and
SAMSUNG ELECTRONICS AMERICA, INC.,

Defendants.

Case No. 2:23-CV-00103-JRG-RSP

DEFENDANTS' MOTION FOR LEAVE TO SUPPLEMENT EXPERT REPORTS

Defendants Samsung Electronics Co., Ltd and Samsung Electronics America, Inc. (collectively “Samsung”) respectfully move for leave to serve supplement rebuttal expert reports in response to (1) Headwater’s service of supplemental opening reports and (2) Mr. de la Iglesia’s claim construction opinion first disclosed during his deposition on October 30, 2024.

Samsung’s proposed supplements are narrowly tailored to this new information. Plaintiff Headwater Research LLC (“Headwater”) has articulated no objection as to supplementation on the first issue but opposes supplementation on the second issue.

I. THE COURT SHOULD PERMIT SAMSUNG TO RESPOND TO HEADWATER’S SUPPLEMENTAL REPORTS

On November 1, 2024, Headwater moved for leave to serve supplemental expert reports related to certain discovery obtained after opening reports. Dkt. 194. For the reasons set forth in Samsung’s response to that motion (Dkt. 239), Samsung respectfully requests leave to respond to those supplemental reports. On November 6, 2024, before completion of Dr. Foster’s deposition, Samsung shared Dr. Foster’s response to Mr. de la Iglesia’s supplemental report. Ex. 1 (Foster Supp. Rpt.) ¶¶ 1-9, 12-27, 35-45. Similarly, on November 15, Samsung shared Dr. Perryman’s response to Mr. Dell’s supplement. Ex. 2 (Perryman Supp. Rpt.) ¶¶ 1-11, 16.

II. THE COURT SHOULD GRANT SAMSUNG LEAVE TO SUPPLEMENT EXPERT REPORTS TO ADDRESS BELATEDLY DISCLOSED CLAIM CONSTRUCTION OPINIONS

Mr. de la Iglesia never disclosed, in either of his reports, that he was applying a claim meaning other than the plain and ordinary meaning or the Court’s constructions. Ex. 3 (de la Iglesia Op. Rpt.); Ex. 4 (de la Iglesia Reb. Rpt.). Throughout the claim construction process, Headwater disclosed that terms should only be given their plain and ordinary meaning. Dkt. 101-1 (Joint Claim Construction Statement). Yet, during his deposition on October 30, 2024, Mr. de la Iglesia opined that the “application identifier” of the ’117 patent claims must identify “*only one*

software process for forwarding the application data.” Ex. 5 (de la Iglesia 10/30/24 Dep. Tr.) at 392:19-394:25 (emphasis added).

As this claim construction opinion was not previously disclosed, either during the Patent Local Rules’ required claim construction disclosures or in Mr. de la Iglesia’s opening or rebuttal report, Dr. Foster could not have considered this opinion earlier. It would be unfair to allow Mr. de la Iglesia to inject a new claim construction opinion without permitting Dr. Foster to address it. Paragraphs 10-11 and 38-44 of Dr. Foster’s supplemental report are confined to doing so. Ex. 1. Those responsive opinions include the identification of an additional non-infringing alternative. *Id.* ¶¶ 33-34. That identification impacts Dr. Perryman, Samsung’s damages expert. Dr. Perryman’s supplement report briefly and narrowly addresses Dr. Foster’s supplemental opinions. Ex. 2 ¶¶ 12-15. It would hardly be a fair result if Headwater’s experts could rely on a claim construction opinion while Samsung’s experts could not, where Headwater did not reveal this claim construction until expert depositions—well after claim construction proceedings and the exchange of opening and rebuttal expert reports.

III. CONCLUSION

Accordingly, Samsung respectfully requests that leave be granted as to the supplemental expert reports of Dr. Foster and Dr. Perryman in their entirety (Exs. 1, 2).

Dated: November 18, 2024

Respectfully submitted,

By: /s/ Katherine D. Prescott

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CERTIFICATE OF CONFERENCE

Pursuant to Local Rules CV-7(h) and (i), I hereby certify that counsel of record for Samsung and Headwater have met and conferred. Headwater opposes this motion.

/s/ Katherine D. Prescott

Katherine D. Prescott

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5 on November 18, 2024. As of this date, all counsel of record had consented to electronic service and are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3)(A).

/s/ Katherine D. Prescott

Katherine D. Prescott